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LAW AND ORDER CONSERVATISM AND YOUTH JUSTICE: OUTCOMES AND EFFECTS IN CANADA AND ENGLAND AND WALES

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Abstract

This paper explores how underlying law and order conservatism has shaped and defined youth justice policy in England and Wales and Canada. We argue that cultural and political influences affected implementation in ways which were initially unforeseen and therefore unconsidered.

Our focus is twofold, on the intentions that drove the policy and practice changes and subsequently, on the negative consequences that emerged during implementation. We explore these with regard to the application of discretion and the paper considers the complexity of discretion and how neither, reducing or increasing it has led to simple or obviously predictable patterns. In addition, we apply Thompson's (2006) model of Anti-Oppressive Practice to consider how policies that were not intended to be oppressive and which were evidence based and informed by research and the policy community moved towards a law and order agenda.

Keywords

Youth offending; Youth Justice Systems; Law and Order; unintended consequences.

Introduction

In Canada and the UK, law and order conservatism has for more than a decade been a preeminent political discourse in the conceptualization of youth crime. More than ten years ago both countries introduced new legislation with the aim of reducing youth offending; the approaches were underpinned by similar views of young people and law and order. However, despite these similarities both countries followed different trajectories and experienced differential outcomes and successes.

This paper explores how changes within the Youth Justice Systems in Canada and England and Wales had unintended consequences in both countries and considers whether these could have been foreseen had theoretical injunctions, practice knowledge and research findings been differently utilized. We also discuss whether the impact of the precepts of law and order conservatism has been to increase the number of young people in custody despite falling crime rates. The legislation and practices within the Youth Justice Systems form the immediate concern of this paper; the focus is on the initial intentions which drove the policy and practice changes and some of the negative consequences which appear to have arisen as a result of the effects on practice – thus the implementation of that legislation and policy.

The evolution of the Crime and Disorder Act (CDA) (1998) in England and Wales and the Youth Criminal Justice Act (YCJA) (2002) in Canada and their additional and supporting pieces of legislation and policy have been comprehensively dealt with elsewhere (Bala, 2003; Dugmore & Pickford, 2007; Goldson & Muncie, 2008; Tustin & Lutes, 2012; Arnull, 2013). There are also considerable differences in youth justice practice between England and Wales and Canada, and within the provinces and territories of Canada. This reflects a complexity in referring to the Canadian youth justice system as homogenous as the YCJA is federal legislation that is enacted at the provincial and territory level by local governments. This means that implementation is also a variable practice, for example whilst in England and Wales there are multidisciplinary Youth Offending Teams (YOTs), in Canada some regions have dedicated youth probation services or social services that undertake that remit. However, these variations while interesting are not the focus of this paper.

One of the negative effects that resulted from implementation of the CDA (1998) in England and Wales was that the changes introduced had impacts which led to more stigmatisation and labelling of young people; this was in part because more young people were drawn into the system and because of an atmosphere of moral outrage and blame. Consequences such as these are ones which have potential import for Canada. Labelling (Cohen, 2002) may affect all young people but has potentially even greater resonance for those living in smaller communities; it is also relevant in regard to the realisation of children's rights for example, those under the United Nations Convention of the Rights of the Child (UNCRC). This paper explores how the underlying law and order conservatism, which was a shaping and defining feature of youth justice policy in England and Wales and Canada, influenced the different policy structures created. We argue therefore that cultural and political influences can affect implementation in ways which are initially unforeseen and therefore unconsidered by those devising or lobbying for the policy (Levin,

1997; Arnull, 2013) and that a key feature which affects this is the underlying political and cultural 'tone' which affects public policy – in this case, law and order conservatism.

The introduction of new legislation

Initially, the CDA (1998)[4] aimed to reduce police officer and practitioner discretion and established a more procedural youth justice system. In Canada however the YCJA (2002) sought to enhance discretion (where practical). It allowed for a three stage referral process that meant that police officers could refer young people pre charge, crown prosecutors could refer post charge and judges could refer at the sentencing stage of the legal process to programs outside of the system. This thereby sought to reduce the detrimental effects of drawing less serious offenders into the full purview of the Youth Justice System (Carrington & Schulenberg, 2003).

Therefore the YCJA (2002) in Canada originally led to lower numbers of young people being charged and thus increased the number who were diverted; thereby fewer young people appeared in court or received custodial sentences. However, the unintentional effect appear to be an increased trend in the numbers of young people held in custody pretrial (Bala & Anand, 2012) and the potential to increase, rather than decrease, incarceration provisions for young people for less serious offences (Turpel-Lafond, 2010; UNICEF, 2011).

Within the UK the implementation of the CDA (1998) and subsequent legislation in England and Wales also led to unintended effects, such as the moralisation of young people through the introduction of civil penalties for social behaviours such as hanging around and thereby being perceived to cause a nuisance. The penalties, Anti-Social Behaviour Orders for example, do not form a focus for this paper but they form a backdrop to an atmosphere that became increasingly moralised and outraged. The penalties commonly associated with this moralised atmosphere were connected to concepts of a lack of respect for others and although civil in nature could lead (by way of breach) into the criminal sphere. In addition, the mandatory policing and sentencing of first, and less serious offenders, increased the numbers of young people in court, sentenced and serving custodial sentences (Arnull, 2009; YJB, 2013; Fox & Arnull, 2013).

The early successes of the Canadian youth justice legislation by diverting young people from the YJS did not mirror the deleterious effects of their British counterparts. However the neo conservative values that underpinned the subsequent YCJA amendments may ultimately lead to these negative effects although that is not the deliberate or stated intention (Greenspan & Doob, 2012). It is this consideration that we wish to explore through a comparison of the various legislations and the effect of those within the Youth Justice Systems (YJS) of Canada and England and Wales.

[4] The Act applies to the UK, but certain sections apply in certain jurisdictions. As the Youth Justice System in England and Wales as created under the Act is different from that in Scotland and Northern Ireland, just England and Wales are dealt with in this paper.
http://www.legislation.gov.uk/ukpga/1998/37

The recent past

In England, Wales and Canada the respective governments have recently sought to amend either legislation and/or policy in relation to addressing youth crime although the underlying neo-conservative philosophy has remained. Within both jurisdictions the changes appear as a complete reversal of the initial intentions of both the YCJA (2002) and CDA (1998) concerning the use of discretion. Thus, in Canada, the Government through the Bill C10 amendments has now sought to diminish the use of discretion (Turpel-Lafond, 2010; Bala, 2011). In the UK, although legal amendments have not been introduced, there has been a re-interpretation of some of the legislation that impacted so negatively during the CDA's (1998) first years of use.

In England and Wales the government is once again allowing practitioner and law enforcement agencies more leeway to deal with anti-social behaviour with alternative measures outside of the legal system unhindered by legislative requirements. For example, the Youth Justice Board (YJB) (the non-departmental public body responsible for overseeing the youth justice system) in *'…recent years a number of schemes have been set up to divert young people from formally entering the Youth Justice System*' (YJB, 2013:16). These policy and subsequently practice based changes have resulted in a drop in the processing of young people through the system, thus:

> 'There were 40,757 reprimands, final warnings and conditional cautions given to young people in England and Wales in 2011/12. This is a decrease of 18 per cent on the 49,407 given in 2010/11, and a decrease of 57 per cent on the 94,836 given in 2001/02.' (YJB, 2013:7)

The focus to increase discretion appeared to be driven by the high number of young people being processed by the YJS. The YJB accounted for this by saying it was to (YJB 2013:16):

- 'avoid the unnecessary criminalisation of young people on the fringes of criminal activity;
- ensure that formal justice processes are focussed on relatively serious offences, and can resolve these cases more quickly and effectively; and
- increase the use of restorative processes to make young people take responsibility for their actions and to promote confidence in justice among victims, witnesses and the wider community'.

In addition Youth Offending Teams (YOTs) now supervise significantly falling numbers of young offenders in England and Wales,[5] although the number of offences for which young people are deemed responsible at 15% of all offending is greater than their percentage of the whole population at just over 10%. However, the over-representation is really

[5] This fall has had unforeseen consequences, for example teams now do not need to be so big as their caseloads are much smaller and this, along with other economic pressures, have led to budgets being cut. The YJB attribute the fall in supervisory numbers to the fall in first time entrants into the YJS (2013:24).

accounted for by boys who make up approximately 5% of the population but just over 12% of offences, whilst girls also account for approximately 5% of the population but 2.8% of offences and are therefore under-represented. The figures suggest either that boys aged 10-18 offend in England and Wales more than others in the population, or that they are more likely to be caught or processed more frequently. The statistics identify that persistently, particular societal groups are overrepresented in the YJS in both countries, for example black minority ethnic males in England and Wales and Aboriginal males in Canada (Statistics Canada, 2010-11; YJB, 2013). Furthermore the YJB statistics show a slight increase in reoffending rates amongst those supervised and suggest that those entering the system are now young people who have a higher average number of previous offences/cautions and those with 15 or more previous offences/cautions rising to 4% of the total population (as opposed to 1% in 2001/2: YJB 2013:24). These figures suggest that the refocused aims of the YJB (2013) are being met in part, as it would appear that formal criminal justice processes are increasingly being focussed on more serious, or persistent, offenders.

Meanwhile, at a similar point in time in Canada, amendments to the (YCJA) Bill C10, Part 4, which was part of the Safe Streets and Communities Act (2012) were sought in relation specifically to how youth issues were addressed. The amendments sought to reduce the use of discretionary policing and Court processes; four of the new Bill C10 amendments; Grounds for Pre-trial Detention:s.29(2); Deterrence and Denunciation:s.38(2); Lifting Publication Ban (s.75) and Police Record of Extrajudicial Measures (s.115) are now aimed at reducing discretion. There has been much interest in considering how research evidence informs policy (Weiss, 1979; Levin, 1997; Nutley et al., 2002; Oliver et al., 2014) and the conclusion is frequently drawn that it appears not to have informed it in any way at all. However in the case of youth justice reforms in England and Wales and Canada this was not the case.

The CDA (1998) and the creation of the YJB and YOTs and the overall policy direction were strongly influenced by research (Fox & Arnull, 2013; Arnull, 2013). In England and Wales risk based, longitudinal studies by Farrington (1996) influenced the assessment methods and the forms of intervention planned. In addition campaign and offenders' rights groups were key players at the table, shaping and influencing policy design and construction (Arnull, 2013).

In Canada, research on Restorative Justice approaches and the effectiveness of diversionary activities influenced policy direction giving the opportunity to divert young people away from the YJS to more community based interventions (Bala, 2003; Thomas, 2008). What is of interest therefore is that although there were documentable influences from the research and policy campaign communities, the effects of the policies were not as expected or foretold. Clearly policy formation, development, legislation and implementation are a complex series of processes (Weiss, 1979; Levin, 1997) but the question must be asked whether the cultural and political processes and attitudes towards young people which underpinned the legislation and affected the process of implementation and the players in that process, were more powerful than the research and evidence which went into assembling, influencing and driving the policy creation.

We might reasonably ask therefore, whether the CDA (1998) and the creation of the YJB and YOTs in England and Wales and the YCJA (2002) in Canada, were observable, apparently powerful communities of practice (Amin & Roberts, 2008) or policy networks (Levin, 1997) in operation? And whether these policy networks created policies that in both countries/jurisdictions were undermined (or in the case of Canada is being currently undermined) by law and order conservatism? Furthermore, were the effects of policies aimed at reducing offending by young people and responding to them in ways that were evidence based (though differentially directed) really to drive up the numbers of young people processed by the YJS? In England and Wales there was a rise in those processed (1998-2008/9: YJB, 2013) and in Canada the opportunity was taken to incarcerate more young people prior to their conviction (Statistics Canada, 2010-11). The same underpinning law and order ethos may also now be informing the amendments in Canada, with the potential consequence that recently falling rates of young people being brought into the system may be reversed.

Practice knowledge, research findings and theoretical injunctions

For those researching or working in the YJS in either jurisdiction at a policy or practice level unintended or unforeseen consequences of this type would be of considerable relevance. Using an Anti-Oppressive Practice (AOP) framework therefore we consider the four Bill C10 amendments and compare those to effects in the YJS in England and Wales; we deploy Thompson's (2006) PCS model to consider the amendments and the effects. This model views oppressive practices as occurring on three levels: personal, cultural and societal. The personal level (P) encompasses interpersonal relationships, personal feelings, attitudes and self-conceptions, and interactions between individuals, which correlates with practice relationships (Payne, 2005). The personal is intrinsically linked to the cultural context (C) where norms and rules establish how a person feels about themselves and others along with interactions between people and the environment. The personal and cultural levels are fundamentally embedded within the societal framework (S), which form the structures, norms, rules and order within society (Fox & Arnull, 2013:11-20; Thompson, 2006).

Grounds for pre-trial detention in practice and persistent young offenders

The crime rates in both England and Wales and Canada have steadily declined over the last 10 years or so leading to fewer young people in the Youth Justice Systems; in Canada this appeared to be the effect of YCJA (2002) which decreased the numbers of youth sentenced to custody, whilst initially the CDA (1998) in England and Wales increased custodial numbers to almost breaking point. Within Canada pre-trial detention has been a long-standing issue and although the intention of the YCJA (2002) was to also reduce these rates along with custodial sentences this has not been the case. In fact the rates for incarceration pre-trial were seen to increase alarmingly and thus the amendment to the grounds for pre-trial detention came to be seen as a retrograde step, allowing the opportunity for more rather than less young people to be incarcerated before sentence.

This effect at the implementation stage appears to have occurred because although the YCJA (2002) stated that young people could not be held in custody pre-trial if they could not be sentenced to a custodial sentence if found guilty at trial. Amendments (C-4 s.29:1)

allowed for the detention of youth who might be facing a number of less serious charges although not otherwise considered to be a risk to the community. This step appeared to lead to the increase in pre-trial detention. And again it would seem that apparently sensibly drafted legislation led to similar effects to those felt in England and Wales where the Crime and Disorder Act (1998) defined a formula for identifying persistent young offenders (PYO) with the intention that better identification would lead to more focussed and appropriate interventions. However the effect of identifying young people as PYOs was harsher sentencing on conviction and greater discretion for the judiciary regarding bail applications; it also led to more young people being judged to be a PYO with the consequence that they were more likely to be remanded into custody (Arnull et al., 2005). This effect bears striking similarity to that seen in Canada.

In England and Wales the category of persistent young offender was defined in 1997 as:

> '…a young person aged 10-17, who has been sentenced by any criminal court in the UK on three or more occasions, for one or more recordable offence, and within three years of the last sentencing occasions is subsequently arrested or has information laid against them for a further recordable offence.' (Home Office, 1997)

Research from England and Wales (Arnull et al., 2005) identified that in terms of offending the young people considered PYO's committed a *"high volume of offences, many of which were not serious, but some of which were…"* (cited in Fox & Arnull, 2013:108). Similarities appear in the characteristics of those considered PYO and those detained under the pre-trial detention rules in Canada and reflect the most marginalised groups in society. This manifests itself in the over representation of Aboriginal male youth in the Canadian system and Black Minority Ethnic (BME) males in England and Wales (Statistics Canada, 2010-11; YJB, 2010, 2013). Viewed through the lens of anti-oppressive practice therefore one would suggest that the personal aspects of a young person's behaviour were interacting with other social, structural factors which, because of what we know about the discriminatory effects of those structural factors (YJB, 2013; Statistics Canada, 2012; Thompson, 2006), could have been foreseen.

In addition, a similar effect was found when 'fast-tracking' young people through the YJS in England and Wales. This change, aimed at linking behaviour and consequences, was based on behaviourist approaches which were apparently well grounded in evidence and expert knowledge about young people and dependent upon the theory that linking behaviour to consequences as near in time as possible would be beneficial to the young person, helping them to see the 'wrong' they had done. However, the fast-track effect led to a large increase in young people entering the system and quickly progressing through it, escalating up the tariff system and ending in incarceration (Hill et al., 2007).[6]

Thus in the UK and Canada the use of discretion appeared to have an unpredictable effect. When discretion was available to judges, it appeared to have a negative correlation in

[6] This paper in fact covers Scotland where the welfare based system remained in place - in both jurisdictions in the UK however the effects were equally negative.

both jurisdictions; for example how seriously persistence was judged, and thus whether a young person should have bail. Thus *the increase* in discretion for judges around bail decisions (taking account of the possibility of further offending) *led to an increase in remands* into custody. At the same time and in a contrary fashion, a *reduction in discretion* for the police in England and Wales *led to an increase in State intervention* and a reduction in diversion and it is this, which Canada may consider. The application of discretion is a complex matter and reducing or increasing it has not led to simple or obviously predictable patterns; this complexity will be discussed in more detail below.

Police record of extrajudicial measures: discretion in practice

The systematic implementation of the Final Warning program in England and Wales reduced police discretion and increased levels of police accountability. This aspect of practice was to increase net widening effects by processing more low level delinquency and also led to disproportionately punitive outcomes received by young people (Fox & Arnull, 2013). The effects have been considered interesting with regard to girls and were explored by Arnull and Eagle (2009) as offering a potential explanation for the increase in the number of girls (in proportion to boys) entering the YJS.

The use of police cautions prior to the introduction of the CDA 1998 allowed police officers greater leeway in terms of discretion when they assessed that a greater level of intervention was required to help a young person. This discretion gives opportunity to officers to refer young people to various programs with the remit of addressing offending behaviour and any welfare concerns. These interventions covered a number of areas such as direct and indirect reparation to the victim, the community or both; compensation, community work, and referrals to statutory agencies, such as social services (Home Office, 1997; Card & Ward, 1998; Leng et al., 1998). However, cautions were discredited in many quarters as not being sufficiently punitive, too unstructured, their criteria for intervention were considered too vague and their outcomes too imprecise (Home Office, 1997; Pitts, 2003; YJB News, 2003:1). This lack of sufficiently punitive intervention has been the recent trend in government rhetoric in Canada and results in the proposed amendments to the YCJA (Bala, 2011; Greenspan & Doob, 2012).

In addition, the 1998 Act placed statutory obligations on the police and YOTs to ensure that structural interventions by way of a program of rehabilitation or 'change' (Home Office, 1999; Nacro, 2000; Giller, 2004) occur at the final warning stage of the procedure. This meant that the informal system of 'cautioning plus' was formalized into a system of Final Warnings to be systematically used at certain stages of the youth justice process, combining an assessment by the YOT police officer and/or interventions from specialist workers within the YOT or broader community (Leng et al., 1998; Giller, 2004). There were therefore good research and evidence based practice reasons for the introduction of Final Warnings and the assumption was that less discretion would have a positive anti-oppressive effect.

For Canada the potential correlations are contained within the proposed Bill C-10 that adds s.115 (1.1); this will require that the police “shall keep a record of any extrajudicial measures that they use with young persons”; thus changing the present permissive regime (Bala, 2011). However, one may wonder if part of the success of the pre CDA (1998)

cautioning and the YCJA (2002) extrajudicial measures were the attractiveness of their informality? The requirement of little or no reporting or paperwork led to expedient resolutions for the less serious anti-social youth behaviours and did not draw the young person into the criminal justice system.

The amendments to the YCJA (2002) and the CDA (1998) Final Warning program in England and Wales appeared to imply that police officers and others would behave in a discriminatory way and/or were not trusted to use their discretion; the implication was therefore that by introducing mandatory systems that the agents of social control, those within the YJS including the police, were also under surveillance (Gilbert & Powell, 2010).

The question may also be posed whether officers may charge more often if the same amount of paperwork is involved? Should this be the case the Canadian amendment would have unforeseen consequences beyond the stated policy intention of standardizing police practices and reducing discretion.

Fox (2006) explored the negative impact of the Final Warning Program on young people in England and Wales where the newly structured and systematic approach to first time offenders appeared to limit the opportunities for practitioners to demonstrate common sense and discretion within its remit. Discretion, for many, called to mind issues of accountability and bias and limiting it appeared to offer the possibility for ensuring fairness and transparency (Thompson, 2006). However, as we have seen there is also evidence that in some circumstances, where discretion has been curbed, the ability to use common sense was also reduced (Fox, 2006; Saenz de Ugarte & Martin-Aranaga, 2012).

Deterrence and denunciation: research findings

In 1980 '*71,000 boys and girls aged 14–16 were sentenced by the juvenile courts in England and Wales, by 1987 this figure had dropped to 37,300, a reduction of over 52 per cent. Police cautioning and other less formal modes of pre court diversion were starving the courts of juvenile offenders*' (Pitts, 2003:7). The significant falls in young people being processed through the courts for delinquent or offending behaviour during the 1980s was however viewed by some as of concern, and it was considered that those who were processed were 'rewarded' for offending or misbehaviour by undertaking 'fun' diversionary schemes. At the same time there was a perceived breakdown in communities and a lack of respect for others. The social policy drive under New Labour post 1998 was therefore to increase a sense of individual, social responsibility. However those moves had been preceded by social policy debates in which the debate had moved towards a law and order lobby on all sides of the House. Thus, Prime Minister, John Major, had said:

> 'Society needs to condemn a little more and understand a little less…'
> (Major, 1993: Independent)

By the early 2000's the effects were being felt and academics and commentators such as Pitts (2003:61) were criticising the 1998 Act for bringing more '*children, young people and their parents into the purview of [the youth justice] system*'. In addition, they suggested that Final Warnings were overly punitive, disproportionate, and possibly led to net widening (Evans & Puech, 2001; Pitts, 2003; Giller, 2004).

In response to growing concerns that in an era of falling crime rates more young people were being brought into the system (and perhaps a concern to reduce escalating costs), action was taken and this was cemented by the Coalition government who heralded a move away from standardisation and towards increased professional discretion. By 2011/12 there were '*137,335 proven offences by young people in 2011/12, down 22 per cent from 2010/11 and down 47 per cent since 2001/02.'* (YJB, 2013:8). The YJB suggested the rise post-1998 in proven offences was now in decline.[7]

The YJB argued that the larger rise in the numbers of young people coming into and being processed through the YJS post the CDA (1998) could be attributed to '*the Offences Brought to Justice target (OBTJ), which created targets for the police around the number of offences reported to them that should be brought to justice, i.e. resolved and an offender given a caution or conviction.'* They suggested that:

> 'This may have affected the behaviour of the police to arrest more young people in order to meet their targets. The peak of arrests and out of court disposals for young people occurred in 2006/07 and the subsequent large falls coincide with the replacement of the target in April 2008…and in December 2010 it was dropped entirely.' (YJB, 2013:18)

Elsewhere they note that the OBJT was one contributory factor amongst other unknown ones for first time entrants. The role of the OBJT in raising the number of young people processed through the YJS is considered by the YJB to be attributable to the pressure on the police to achieve particular outcomes, and in this reflects another key feature of social policy at that time, which was the focus on the achievement of targets. (YJB, 2013:22).

However, a key factor in these decision making processes was also about lessening and curtailing discretion and ensuring a transparent process which could be examined and evidenced; in both instances the policy changes were not meant to drive up the numbers of young people being drawn into and processed by the YJS and were therefore unforeseen and unexpected outcomes (Arnull, 2013; 2014). An unconsidered part of the process was the political tenets and philosophy of the time which called for greater responsibility, the attribution of criminal responsibility to the individual and for professionals within the CJS to be seen to enforce and underline that responsibility.

Within Canada deterrence and denunciation were deliberately omitted as sentencing principles when the YCJA was introduced in 2002 (Knudsun & Jones, 2008). However in line with conservative law and order principles there has been a move in the amendments of s.38(2) to reverse that view and allow for the notions of societal condemnation of criminal acts and use sentencing sanctions to act as a deterrent against further offending. The changes in the YCJA sentencing guidelines therefore appear to have political and

[7] They are also not directly comparable because they relate to 10-17 year olds who are a larger group; it also includes all proven offences not just those sentenced. Changes in the way offences are counted and the types of offences which exist changed during this period and therefore caution must be undertaken when making any direct comparison – the figures are simply to be used as indicative and illustrative.

cultural undertones and correlations with the '*tough on crime, tough on the causes of crime*' approach undertaken by the UK labour government when the CDA was introduced in 1998 (Bala, 2011; Globe and Mail, 2011).

The use of deterrence and denunciation as sentencing principles fall within a well-established 'law and order conservatism' approach to crime that has long been prevalent in the UK. It is one, which it would seem the Harper Government in Canada wishes to follow, despite research and practice wisdom which has suggested that it can have deleterious effects. Law and order conservatism is reflected in the 'toughness' of present penal policies (Pratt, 2002; Cavadino & Dignan, 2005) and this has been seen to take effect more generally in the recent past in socially liberal countries in Europe such as Sweden and Holland (Hopkins Burke, 2014). The underlying ethos of law and order approaches is to place the responsibility for offending in individual traits such as 'wickedness' and/or anti-social traits and a lack of respect for others within society or their community (Etzioni, 1993). The ultimate result appears to be that offenders are '*punished harshly in order to provide them with a moral lesson and to serve as a general deterrent*' (Mantle et al., 2005:20).

The CDA in the UK established links with Kelling and Wilson's (1982) 'Broken Windows' theory which demanded that even minor misdemeanours be pursued with the same vigour as serious crimes and ultimately gave rise to the 'zero tolerance' approach to addressing youth crime. In this, the direction was clearly not evidence-based, but a philosophical direction of travel, for as Doob and Webster note (2003:153) '*time has come to conditionally accept the null hypothesis: severity of sentences does not affect crime levels*.'

The move by the Canadian government to a more punitive stance against young offenders is also in conflict with current research findings that youth crime is decreasing and other philosophical approaches which suggest that harsh sentencing can disregard the rights of young people in terms of the UNCRC (1989), Human Rights Act and the Bejing Rules.

The experience from the British context and the recent moves within Canada suggest the potential negative consequences which may occur when governments 'play politics' with youth justice. The effects of rhetoric were to: exaggerate youth crime, create anxiety about certain types of behavior, 'hype' up public, unfounded concerns or even create those concerns about youth behavior or the lack of responsibility which it was assumed the young people did not take or were not made to take. The impact may be to lead to punitive options and ultimately widen the 'net' bringing in more low-level delinquency and it appears to impact disproportionately on already structurally disadvantaged and marginalized groups. Thus, for example in the UK and Canada there were media concerns and significant coverage of young people's drinking behavior, and for a period these concerns were focused on a drinking game called Neknominator (BBC News, 22 February 2014; CTV News, 6th February 2014). The death of a young person which was linked to this game appeared to lead to a media response which gave the impression that the behaviour was 'criminal' rather than social, personal risk taking. This might be contrasted with media responses to suicide rates in the UK, which for young people have increased significantly since 2010/11 (Mental Health Foundation, 2015; Samaritans, 2015). This serious rise did

not however appear to lead to a 'moral panic' about the social stresses and strains which would seem to have led to the heightened vulnerability of young people and to their early deaths through suicide.

Lifting publication ban: theoretical injunctions

New Deviancy Theory believes that the justice system and society create more criminals than they deter and encompasses the concepts of labelling and postulates the notion of over reaction by the social agents, for example the police to particular criminal activities (Tannenbaum, 1938; Kituse, 1962; Becker, 1963; Lemert, 1967). Thus the assertion by the YJB (2013) that the numbers of young people entering the YJS in the late 1990s and early 2000s can be attributed to police activity in response to certain targets, which led to a focus on low level criminal activity in order to meet those targets, would appear to offer a rationale for New Deviancy Theory.

As we have considered the New Right and the 'law and order' debate have, in the recent past, dominated the English and Welsh and Canadian political agendas and influenced the cultural atmosphere in which public policy was debated (Mishra, 1990; Major, 1993; Jordan, 1995; Feeley & Simon 1998; The Independent, 2014). The media headlines and lead stories reflected the idea that crime was spiralling out of control and society needed to be protected (Feeley & Simon, 1996; Telegraph, 2014). Strangely this view persisted even during periods of falling crime. The 'get tough' rhetoric of political parties in both countries has established a criminological focus on the increased punitive nature of judicial decision-making and criminologists have analysed this trend within a socio-economic and political context (Brake & Hale, 1992; Alvi, 2000; Winterdyke, 2000; Cavadino & Dignan, 2005).

Trends like the earlier examples discussed, sought to individualise behaviour and deny or minimise structural or social effects. Thus they emphasised Thompson's Personal-Cultural level, for example, and de-emphasised the Cultural-Structural. An example of this was the move to identify and 'shame' young offenders in England and Wales and this trajectory was contained within amendment s38(2). 'Labelling' theory (Cohen, 2002; Hopkins Burke, 2014) has examined how the transgression of agreed and acceptable societal norms creates concepts nominated to be deviant and assigns meaning to that behaviour. From this perspective, deviancy is not seen as the quality of the act committed but how that act is viewed by others (Becker, 1963). Thus, once an individual is given a label, for instance, that of criminal, victim or perpetrator then they and society will view them as such. This in turn negates and marginalizes their ability to function as fully integrated societal members or re-imagine or reinvent themselves. Legitimate activities such as school or employment may also be denied them and thereby force them to perpetuate their label (Becker, 1963). At this phase of personal, social and biological development in the adolescent the impact may be considerable (Coleman, 2011). In this light the publishing of a young person's picture or name can only be assumed to be a retrograde and reactive response leading to the further marginalisation and oppression of young people already at the margins of

society[8] (see recent examples in the UK for anti-social behaviour for example). Fox and Arnull (2013) have explored how this impacts young people caught up within the YJS in the UK, such that the high levels of victimisation experienced by this group are often ignored, whilst concerns about their criminal and delinquent behaviour and their responsibility for those are punished.

Policy informed by anti-oppressive practice

The four Canadian amendments outlined above can be viewed using Thompson's (2006) PCS model of oppression. Deterrence and denunciation can be seen as structural forms of oppression through which British and Canadian society and their youth justice systems appear to be shaped by patriarchal and racist policing policies. These in turn impact the cultural and personal levels of oppression experienced by individuals by over focusing police intervention on specific marginalised groups (Thompson, 2006; see also McAra & McVie, 2010, for example). This is then demonstrated in the over-representation of particular marginalised groups such as Aboriginal and BME males in the British and Canadian youth justice systems respectively (Statistics Canada 2010-11; YJB 2013) and in the over-representation of poor young people more generally. The idea that society condemns criminal acts and that its disapproval should correlate with harsher sentencing principles has very limiting and punitive implications for young people from specific societal groups. The reasons for marginalisation are similar and complex, comprising of potentially multiple oppressions at the personal and structural levels. For example many offenders come from predominately poorer socio-economic backgrounds, may have learning difficulties or mental health problems, lack parental supervision, and opportunities for education and subsequently gainful employment (Hagell, 2002; Department of Justice, 2003; Arnull et al., 2005; Bryan et al., 2007; Fyson & Yates, 2011, Fox & Arnull, 2013). From an anti-oppressive practice perspective, the amendments could lead Canada to follow the UK example and experience similar negative effects, such as a reinforcement of established stereotypes and over-representation of the most vulnerable young people in custodial settings (Fox & Arnull, 2013).

An anti-oppressive practice lens would also allow for a critical review of who benefits and who loses from particular structural policies and legislation. Criminal justice and penal systems often focus on particular crimes and criminals to the exclusion of others, appearing to serve the interests of the wealthy and elite over the poor. This may lead to differential policing such that certain groups (McAra & McVie, 2010) or certain types of crime, like white-collar crime, are not policed nearly so stringently (Sutherland, 1962).

In Canada and England and Wales policy structures were created which were based on research evidence aimed at reducing youth offending. For example, in both countries risk based, actuarial systems were established and both identified restorative justice approaches as favoured modes of addressing less serious offences (Crawford & Newburn, 2003; Department of Justice, 2009). However, in both countries a law and order political

[8] In the UK this has become commonplace in some local press where pictures and details of a person's alleged anti-social behavior are published along with their picture; significant exclusions can be placed on their behaviour and movements and members of the public asked to report them if they are seen in those areas. These can be found through a simple internet search.

philosophy and a culturally negative and individualised view of young people have also flourished. Thus, despite falling crime rates in England and Wales and Canada, more low-level offences by young people have been dealt with by the YJ systems. Both decreased and increased levels of discretion at different points in the system have also led more young people to be processed, leading to increased opportunities to label, name and shame.

Thompson's (2006) AOP model helps us to consider the impacts on young people's lives as a result of the practices amongst professionals within the youth and adult criminal justice systems as a result of these policy trajectories. It also provides a framework through which to consider how policies which were not intended to be oppressive and which were evidence based, informed by research and the policy community have been moved towards a more oppressive law and order agenda.

Summary and conclusion

In Canada Bill C10 amendments are numerous and formed part of a wider raft of changes to the Safe Streets and Communities Act (2012) however, not all had the potential for negative outcomes for young people (Bala, 2011). As we have discussed, the four amendments outlined in this paper share a political 'law and order' philosophy of harsher punishment for young people and reduction in discretion. The merits of these amendments are not supported by research findings, expert knowledge or practice wisdom, and theoretical constructs suggest their negative effects have the potential to spread beyond the immediate justice system and impact more broadly on young people's lives. The amendments have been criticised widely for their ability to cause greater harm to the young people exposed to their processes (Canadian Criminal Justice Association, 2010; Cook & Roesch, 2012; Greenspan & Doob, 2012).

While the four amendments outlined above are still not fully implemented or their effects realized in all provinces or territories in Canada, we do suggest cautious reflection. Our experiences of working and researching in the youth justice system in England and Wales and Canada led us to explore how a reduction in discretion may have potentially more negative outcomes for certain already marginalized groups. Fox (2006:137) suggested that the "*system can lose elements of compassion and mitigation*" and therefore suggested the reintroduction of measured discretion on an individual case need basis.

It is also worth stopping to consider, that at a time when it appears that the Canadian government is moving to promote a 'tougher on crime' approach to addressing youth crime, the UK government and others commenting on the youth justice system (for example Carlile Inquiry, 2014) appear to be taking the reverse view. In Britain the Coalition government has reviewed the criminal justice system seeking to establish measures that assist in reducing anti-social behaviour, the costs of crime and responding to crime. They have promulgated an approach based on localism which seeks to provide local solutions and appears to suggest increased discretion and professional decision making.

In a move not linked to this increased decision making they have also launched a number of 'payments by results' programs in which local authorities receive a sum of money if they can identify successful outcomes when working with targeted families on issues such

crime and anti-social behaviour, worklessness, education and health (Arnull, 2013; 2014). The money is intended to finance the early transformation of services to the benefit of the programme and identified families (Fineberg, 2012). In addition, the government appears to have a renewed confidence in the expertise of 'professionals' to address offending behaviour (Ministry of Justice, 2010). The 'Breaking the Cycle' document uses the words 'freedom' and 'discretion' when discussing how professionals will be able to go about the business of reducing offending, recidivism and future victims (Fox & Arnull, 2013:76-77). This is mirrored in other changes across the health and social care system in the UK where professional discretion and opportunities for it are being recommended (Munro, 2011).[9]

We are all too aware that youth crime is a perpetual political issue that permeates across society with young people more often portrayed negatively in the media amid images and stories representing fear and dangerousness (Fox & Arnull, 2013). While this continues to be the case in Canada, the UK Government in 2011 produced the 'Positive for Youth' document identifying that the government was '*passionate about creating a society that is positive for youth…*' and that '*…Young people matter. They are important to us now, and to our future, and we need them to flourish…*' (2011: Foreword). The document suggested that the British government was turning full circle in its approach to addressing youth crime and its views of young people as necessarily problematic. To date however there has been little evidence of this in reality and changes to data recording mean that many areas of need and risk which were captured by routine YOT data collection (i.e. housing) are no longer required data to be returned nationally and thus the overall socio-economic and structural effects of policy will become much harder to routinely detect.

The amendments in Canada, if negatively realized, will be a retrograde step and an opportunity missed by the Canadian government to again be visionary with its legislation. The approach to addressing youth crime within the YJCA appears at this point to have been essentially positive, with the outcomes of the diversionary programmes and the reduction of youth custody numbers especially so; it would be sad to see this lost in a move to a more punitive and structured system of responses and to not take the opportunity to learn lessons from mistakes made in England and Wales.

[9] Nonetheless, there are serious concerns within the UK about the impact of 'payment by results 'systems especially at a time of financial constraint and severe budget cuts and concerns that these also transfer costs from the State to the provider who may be unable to bear them (Arnull, 2014).

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